

Holland & Knight

31 West 52nd Street | New York, NY 10019 | T 212.513.3200 | F 212.385.9010
Holland & Knight LLP | www.hklaw.com

Christine N. Walz
(212) 513-3368
christine.walz@hklaw.com

March 14, 2019

Via E-Filing

The Honorable Naomi Reice Buchwald
United States District Court for the Southern District of New York
500 Pearl St.
New York, NY 10007-1312

Re: ***Vuzix Corp. v. Ricardo Antonio Pearson*, Case No. 1:19-cv-00689**
RESPONSE TO STATE COURT FILING

Dear Judge Buchwald:

We write to oppose Plaintiff Vuzix Corporation's improper filing in New York State Court in the above-referenced matter. There is no basis for Vuzix to have filed its Amended Complaint in state court, when this matter has been removed to federal court. Instead, this is yet another indefensible tactic for the simple purpose of consuming Richard Pearson's time and money with this frivolous lawsuit, which Vuzix knows it cannot win on merit.

During the pre-motion conference call on February 27, 2019, Vuzix's counsel Sichenzia asked the Court for permission to amend Vuzix's complaint. Pursuant to the Court's instruction during that conference call, the parties submitted a proposed schedule for Vuzix to amend its complaint, and for Richard Pearson to file his motion to dismiss the amended complaint, and for subsequent briefings by both parties. (Dkt. 14.) On March 11, 2019, the Court entered an order setting forth the deadlines for those filings to made. (Dkt. 15.) Vuzix was given until March 13, 2019 to file its amended complaint in this federal Court.

Vuzix failed to meet this deadline. Instead, Vuzix chose to file an amended complaint in New York state court. (*See* Dkt. 16.) There is absolutely no basis for Vuzix to file its Amended Complaint in state court instead of federal court. This case was removed to federal court on January 23, 2019. On February 22, 2019, Vuzix filed a Motion to remand this case back to state court, based on its false assertions that Richard Pearson is someone named "Ricardo Antonio" who it says is a citizen of New York. But the Court did not entertain these arguments and instead allowed Vuzix the additional two weeks until March 13, 2019 to file an amended complaint in federal court.

This deliberate filing into the wrong court system is just the latest example of Vuzix's tactics designed to draw out the litigation, to waste Richard Pearson's time, to increase his legal expenses, and to delay the ultimate resolution of this case, which Vuzix knows full well that it cannot win on merit. Further specifics of these ongoing abusive tactics were laid out in detail in Richard Pearson's filing with this court in opposition to Vuzix's Motion to Remand, which Richard filed on February 26, 2019. (Dkt. 13.)

For these reasons and for the reasons set forth in his pre-motion conference letter outlining the basis for his motion to dismiss (Dkt. 4), Richard Pearson requests that this Court enter an order dismissing Plaintiff's Complaint with prejudice and awarding him his attorney's fees and costs incurred in defending this meritless case. *See* Cal. Civ. Proc. Code § 425.16.

Respectfully submitted,

HOLLAND & KNIGHT LLP

/s Christine N. Walz

Christine N. Walz
31 West 52nd Street
New York, NY 10019

Counsel for Richard J. Pearson

cc: Todd Manister
Sichenzia Ross Ference Kesner LLP
1185 Avenue of the Americas, 37th Floor
New York, NY 10036

Counsel for Vuzix Corp.